

## AGREEMENT

This Agreement is made as of the 15th day of January, 1993, by and between Philip Morris Incorporated, with executive offices located at 120 Park Avenue, New York, New York 10017 ("Philip Morris") and Ventura Associates Inc., with executive offices located at 1211 Avenue of the Americas, New York, New York 10036 ("Ventura") pursuant to which Ventura will render services for Philip Morris.

### 1. Services

Ventura will perform the following services in connection with the **PARLIAMENT** "OUT-OF-THIS-WORLD" GETAWAY CONTEST (the "Contest"). The direct mail, advertising and point of sale materials to be utilized will be supplied by Philip Morris. All aspects and other materials to be utilized in connection with the Contest must be approved in advance by Philip Morris.

- (a) Provide general consulting services in connection with the Contest, provide advice on Contest mechanics.
- (b) Assist in preparing Contest rules, affidavits of eligibility, liability/publicity releases, congratulatory letters and other materials required for the administration of the Contest.
- (c) Establish readily accessible mechanisms, including those required by state law, by which prospective entrants may obtain requests for official entry forms, rules and related materials (collectively, "Contest Materials") free of charge;
- (d) Fulfill in a timely manner all requests for Contest Materials;
- (e) On or before December 31, 1994, secure all air hotel and local ground transportation arrangements necessary to fulfill the following prizes in connection with the Contest:

#### Six Grand Prizes - Each to consist of:

- (i) round trip coach airfare for two adults from the airport closest to the prize winner ("Winner") to one of six locations designated by Philip Morris and selected by the Winner at the time of entry into the Contest,
- (ii) 7 day/6 night double occupancy deluxe hotel accommodations, and

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- (iii) ground transportation to and from the hotel to the airport.

The total cost of each Grand Prize will not exceed \$8,000 and the total cost of all Grand Prizes will not exceed \$48,000.

- (f) Submit to Philip Morris weekly and final reports of the number of entries received in each post office box.
- (g) Develop a specific set of criteria against which the quality of all entrants can be judged;
- (h) Develop, in consultation with Philip Morris, a mechanism by which entrants can be fairly and impartially judged against selection criteria;
- (i) Award and distribute the Grand Prizes as and when directed by the official rules of the Contest and Philip Morris, process and deliver airline tickets to the Winners and confirm reservations no less than 35 days prior to the date of each trip awarded as a Grand Prize;
- (j) Conduct background checks to verify that all Winners are eligible contestants, have submitted signed certifications on the entry form of age and smoker status, have submitted the correct number of purchase proofs, if so required, and have otherwise complied with the Contest rules.
- (k) Supply Winners with personalized one page congratulatory letter approved by Philip Morris and obtain affidavits and releases from Winners as required by the rules of the Contest. Deliver to Philip Morris a certified document containing the names of all Winners together with copies of the Form 1099s that Ventura will deliver to the Internal Revenue Service.
- (l) Ensure that the Contest is conducted and Grand Prizes awarded in full compliance with applicable laws, regulations and ordinances.
- (m) Rent and designate <sup>stat</sup> post office boxes during the period April 1, 1993 through October 15, 1993 for the receipt of all potential Contest entries and inquiries concerning Winners. The box for Winners' list requests will be rented and remain open through April 15, 1994.

- (n) Respond to inquiries and complaints concerning the administration of the Contest in accordance with instructions to be provided by Philip Morris.
- (o) Respond promptly to inquiries concerning the distribution of Grand Prizes.
- (p) Receive, store and computer key all Contest entries received, including, duplicate entries, entries with insufficient pack proofs-of-purchase or incorrect essay length, and maintain the entries in a secure manner and location. Unless otherwise directed by Philip Morris, store winning entries for six months following the close of the Contest and all other entries for two months following the close of the Contest. Upon the expiration of entry storage periods, Ventura will destroy or ship the entries to Philip Morris' database located in Richmond, Virginia or as otherwise directed by Philip Morris.
- (q) Ensure that all necessary state registrations and filings in connection with the Contest and the Grand Prizes are promptly effectuated; secure releases of escrow accounts or surety bonds from states where required.
- (r) Submit to Philip Morris a final report on the notification of all Winners, with copies of signed affidavits and the letter of notification.

Ventura will be available to meet at reasonable times with Philip Morris representatives at Philip Morris headquarters in New York or other locations designated by Philip Morris and perform in a professional manner throughout the term of the Agreement.

## 2. Payment

In consideration for the services rendered by Ventura hereunder, Philip Morris will pay Ventura in accordance with the fee schedule set forth in Exhibit A. Ventura will deliver to Philip Morris a monthly invoice detailing services performed. Philip Morris will pay Ventura within 30 days after Philip Morris' receipt of each invoice. Total fee payments to Ventura hereunder will not exceed \$17,000 without the advance written approval of Philip Morris.

## 3. Expenses

Philip Morris will reimburse Ventura, at cost, for reasonable expenses incurred in providing services in accordance

with the expense budget set forth in Exhibit A and Philip Morris will reimburse Ventura 110% of the cost of the Grand Prizes awarded, provided, however, Philip Morris will reimburse Ventura 105% of the cash value equivalent awarded to Winners electing to receive the cash value equivalent alternative to the Grand Prize. Philip Morris will reimburse Ventura within 30 days after Philip Morris' receipt of an itemized invoice detailing expenses incurred. Ventura may not apply funds allocated to one expense category to expenses incurred in another without the prior, written approval of Philip Morris. All expenses of \$25 or more must be submitted with receipts. All expenses in excess of \$250 must be approved in advance by Philip Morris. Total reimbursement for the cost of the Grand Prizes will not exceed \$52,800 and the total of all other expenses incurred in providing services will not exceed \$14,000 without the prior written approval of Philip Morris.

#### 4. Term and Termination

The term of the Agreement will commence as of January 15, 1993 and continue until the later of December 31, 1994 or the satisfactory performance of all Services and the rendering of a final accounting by Ventura. Philip Morris may terminate the Agreement, with or without cause, on fifteen days advance written notice to Ventura. If Philip Morris terminates the Agreement, Philip Morris will have no liability to Ventura after the effective date of termination, with the exception of fees accrued for services performed, and expenses incurred, prior to termination.

#### 5. Records

Ventura, its employees and agents will maintain detailed and accurate books and records of account with respect to activities undertaken on behalf of Philip Morris and will provide periodic reports as and when requested by Philip Morris. Philip Morris, its employees and agents have the right, upon reasonable advance notice and at the expense of Philip Morris, to audit Ventura's books with regard to its performance of the Agreement.

#### 6. The PARLIAMENT Name

Ventura recognizes and acknowledges that the **PARLIAMENT** name and the designs, emblems, slogans and insignia of the **PARLIAMENT** brand, and the goodwill associated therewith, have great value and are the sole property of Philip Morris, and Ventura agrees that it has and will claim no right, title or interest in the same or the use thereof except the right to use them pursuant to the Agreement.

## 7. Ownership

All material prepared or developed by Ventura in connection with the Agreement will become the property of Philip Morris and Ventura hereby assigns to Philip Morris any and all rights in and to the material. Ventura will not use or disclose the material to third parties without the consent of an authorized representative of Philip Morris to whom the materials must be submitted in advance of Ventura's use or disclosure. Any disclosure must be accompanied by appropriate notice of Philip Morris' copyright interest. Ventura will not engage or permit the creation of any copyrightable material for Philip Morris by any person who is not a regular full-time employee whose work is performed under Ventura's direction and supervision and on Ventura's business premises unless that person agrees in writing to execute an assignment to Philip Morris of any and all copyrights in and to the material in a form acceptable to Philip Morris. Upon the acceptance by Philip Morris of any copyrightable material prepared by Ventura, Ventura at the request of Philip Morris, will cause any person who owns any copyright interest in any of the materials to assign all of its right, title and interest to Philip Morris and will assign all of Ventura's right, title and interest in the material to Philip Morris and in each case will deliver an assignment in a form acceptable to Philip Morris. Ventura will obtain all releases necessary to the proper performance of the Agreement.

## 8. Confidentiality

Ventura, its employees and agents will hold strictly confidential the existence and terms of this Agreement and all information and materials provided by Philip Morris to Ventura or created by Ventura in performing the Agreement. The information and material will remain the property of Philip Morris. Ventura will not use or disclose the information and materials to third parties without the written consent of Philip Morris. Upon termination or expiration of the Agreement, or within thirty days thereafter, Ventura will return all materials to Philip Morris. Ventura's obligation to maintain the confidentiality of all information and material obtained from Philip Morris will survive the termination of the Agreement. If at any time during or after the term of the Agreement Ventura is contacted by a third party, including the media, concerning its activities on behalf of Philip Morris, Ventura will make no comment and refer the third party to Philip Morris, Vice President, Corporate Affairs.

## 9. Indemnity

Ventura will indemnify and hold harmless Philip Morris, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs and expenses, including reasonable attorneys' fees, that arise from, or may be

attributable to errors, omissions or fault of Ventura and which are not caused by Philip Morris. Ventura's obligation to indemnify and hold harmless will survive the termination of the Agreement. Ventura will have no liability for the value of tobacco product distributed in connection with the Contest.

#### 10. Insurance

Within ten days of execution of the Agreement, Ventura will deliver to Philip Morris certificates of insurance evidencing coverage for comprehensive general liability, including advertiser and contractual liability, with limits of no less than five million dollars combined single limit for personal injury and property damage; statutory worker's compensation coverage meeting all state and local requirements; and, employer's liability with limits of no less than five hundred thousand dollars. The certificates for comprehensive general liability insurance must name Philip Morris, its affiliates, employees and assigns as additional insureds and must state that Philip Morris will be provided at least thirty days advance, written notice of a cancellation or modification of the insurance. The insurance must be primary coverage without right of contribution from any other Philip Morris insurance. Insurance maintained by Philip Morris is for the exclusive benefit of Philip Morris and will not inure to the benefit of Ventura.

#### 11. Independent Contractor

Ventura is an independent contractor and the Agreement shall not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between Philip Morris and Ventura or its agents within the meaning of any federal, state or local law. Ventura will not enter into any agreement, oral or written, on behalf of Philip Morris or otherwise obligate Philip Morris without Philip Morris' advance written approval.

#### 12. Exclusivity

During the term of the Agreement, and for six months thereafter, Ventura will not, without the prior consent of Philip Morris, engage in creative consulting or similar activities for any company or entity whose business competes with any tobacco product of Philip Morris, or the interests of which are adverse to those of Philip Morris.

#### 13. Miscellaneous

(a) The Agreement and all matters collateral hereto, shall be governed by the laws of the State of New York applicable

to agreements made and to be performed entirely within the State of New York.

(b) Ventura must comply with all applicable laws, regulations, and ordinances relating to its performance of the agreement. Ventura acknowledges that it is cognizant of the provisions of Title 15, Section 1331, et seq. of the United States Code.

(c) This Agreement is the complete agreement between the parties and supersedes any prior oral or written agreement concerning the subject matter.

(d) If any provision of the Agreement is held invalid or unenforceable, the remaining provisions will remain in effect.

(e) Force majeure, acts of God, or other causes beyond the control of either party including, without limitation, the enactment of any legislation, regulation, ordinance or ruling, or the rendering of any judgment, or the taking of any judicial, governmental or regulatory action that, in the judgment of Philip Morris, makes the promotion of tobacco products unlawful or impracticable or materially reduces the value of this Agreement to Philip Morris, shall not subject Ventura to any liability hereunder; provided, however, that Ventura shall refund to Philip Morris all amounts paid by Philip Morris to Ventura with respect to any Services to be performed during the period commencing on the date such action becomes effective.

(f) The Agreement may not be amended or assigned except in a writing signed by both parties. If an assignment occurs, the assignment will not relieve the assigning party of its liabilities and obligations under the Agreement. The Agreement is binding upon successors and assignees of the parties. A waiver by either party of any of the terms and conditions of the Agreement in one or more instances will not constitute a permanent waiver of the terms and conditions.

(g) Notices provided shall be in writing and sent by certified mail, return receipt requested. Notices to Ventura will be sent to Ventura Associates Inc., 1211 Avenue of the Americas, New York, New York 10036, Attention: Renee Friedman. Notices to Philip Morris will be sent to Philip Morris Incorporated, 120 Park Avenue, New York, New York 10017, Attention: Shelly Town-Rafferty.

VENTURA ASSOCIATES INC.

By: *Renee Friedman*

Taxpayer ID# 13-3167659  
Filing Status: corporation

PHILIP MORRIS INCORPORATED

By: *Shelly Town-Rafferty*